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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FIFTY-SEVENTH SESSION

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[19 March 1996]

1. In any given year, thousands of young women around the world migrate, internally and internationally, in search of work. Many are lured, abducted or sold into prostitution or are deliberately deceived about the working conditions that await in this and other sectors. Regardless of how these migrants travel, including those who migrate legally, for example for jobs in domestic service, they face human rights violations such as debt bondage, illegal confinement, rape and undue arrest, and have virtually no legal recourse.

2. Most women and girls who have been trafficked into prostitution are controlled through debt bondage. The debt is usually incurred through a payment to the woman's or girl's family at the time of recruitment, added to the transportation costs and living expenses, which she must repay with interest, usually by working at the brothel. Most women do not know how much they actually owe or the terms of repayment. The debt bondage is often

enforced through illegal confinement. In most cases, the women can leave the brothel only with the owner's permission and often, not even then. Moreover, most trafficking victims are forced to have sex with several customers a day and are beaten if they refuse. This is not only tantamount to rape, but also leaves the women and girls at heightened risk of exposure to sexually transmitted diseases, including AIDS, because they are unable to control condom usage or the number of partners.

3. The human rights violations described above have been dismissed largely as crimes perpetuated by private individuals for which the State is not accountable under international human rights law. However, in many countries, law enforcement officials are directly involved in traffic in women and girls and profit from this trade. For a price, officials ignore abuses that occur in their jurisdictions; protect the traffickers, brothel owners, pimps and clients from arrest; and serve as enforcers, drivers and recruiters. In instances where women are taken across national borders, immigration officials often aid and abet their passage. Efforts to control prostitution usually result in the arrest and prosecution of the women and girls rather than of the traffickers, brothel owners, pimps, clients and recruiters.

4. In fact, these abuses constitute clear violations of domestic and international law. Governments are specifically obligated to take appropriate steps to eradicate forced trafficking in persons, slavery-like practices, rape and forced labour, among other related abuses. In addition, Governments are obligated to ensure women equal protection under the law, which would prohibit the discriminatory arrest of only the female prostitutes and not the male clients or (often) male owners of brothels.

5. In south-east Asia, women and girls from Myanmar are traded into Thailand with false promises of employment, such as restaurant and factory jobs, only to find themselves trafficked into prostitution in Thai brothels under conditions that are extremely abusive. They work sometimes 10 to 14 hours a day with only a few days off each month, in order to repay their debt to the brothel owners for travel fees, clothing, medicine and food. The debt is increased by interest, and most women do not know exactly how much they owe or how it would be repaid. The debt bondage is enforced by the women's and girls' near-total confinement to the brothel premises; they are threatened with violence if they attempt to escape.

6. The primary response of the Government of Thailand to these violations has been to arrest and deport the women and girls from Myanmar as illegal immigrants rather than to prosecute the abusers. Once arrested, the women and girls are then subjected to additional violations of their human rights, including their right to due process under international law. For example, many are held in detention for several days and, in some cases, several months without being charged with any crime or having access to counsel. Custodial abuse, ill-treatment and abusive conditions are reported uniformly from the detention centres. In particular, conditions at the Immigration Detention Centre in Bangkok and in local jails are abysmal.

7. To avoid deportation back to Myanmar, where women and girls risk punishment by the State Law and Order Restoration Council for unauthorized

emigration and involvement in prostitution, many women and girls will look for any way to stay in Thailand - which makes them particularly vulnerable to continued exploitation.

8. Hundreds of thousands of women and girls are employed in brothels in India - many of them lured or kidnapped from Nepal. These women and girls are routinely subjected to serious physical abuse, including rape, beatings, and exposure to AIDS. Many are brought to India as virgins; many return to Nepal with the HIV virus. Again, they are held under a debt, of which, in most cases, only the brothel owner knows the size and the terms of repayment. The brothels are tightly controlled, and the girls are under constant surveillance. Further, women fear capture by other brothel agents and arrest by the police if they are found on the streets. Some of the police are the brothel owners' best clients.

9. Existing laws in both countries have little effect on reducing the problem. Both India and Nepal prohibit trafficking in human beings and the other accompanying abuses, but apathy on the part of both Governments, the highly organized trafficking networks, police corruption and the patronage of influential Government officials mean virtual impunity for the parties responsible for these human rights violations. Even when traffickers have been identified, there have been few arrests and even fewer prosecutions. In India a lucrative patronage system has developed between corrupt police and brothel owners; women and girls are reportedly arrested by the thousands under sections of the law designed to curb public prostitution and solicitation. These arrests allow the police to present a public image of vigilance against prostitution while rarely arresting or prosecuting the brothel owners and traffickers responsible for abuses. In Nepal, police and Government officials at all levels tend to characterize trafficking as a social malaise rather than a problem for law enforcement.

10. Because prostitution is illegal in most countries, victims of these abusive work conditions and human rights violations face legal and moral isolation. Although Human Rights Watch takes no position on prostitution per se, we are concerned that in many countries domestic law and practice exacerbate women's isolation and discourage women from speaking out about such abuses or warning others who may be vulnerable. The problem of trafficking of women and girls is increasingly multifaceted, with roots in socio-economic and gender inequities that are exploited by ever more sophisticated, organized networks that often cross borders with ease. At a minimum, Governments must begin vigorously to punish these violations. They should actively investigate and prosecute to the full extent of the law all those involved in trafficking and the associated abuses of debt bondage, illegal confinement and rape. Governments should eliminate discriminatory laws and policies that punish women who engage in prostitution but not the men who operate and profit from prostitution rings and who patronize brothels. In addition, Governments, in conjunction with international organizations, must develop and collaborate on bilateral and multilateral efforts to reduce trafficking and contain its further expansion. They must monitor employment agencies and their borders carefully to prevent the trafficking of women and girls and alleviate the often abusive situations into which they are trafficked. Law enforcement

training should include trafficking issues and the relevant laws and programmes should be developed that protect the human rights of women and girls who have or may have contracted the AIDS virus.

11. Human Rights Watch urges the Commission on Human Rights to:

Call on Member States to reform their law and practice regarding trafficking to make them consistent with international human rights standards, including complying with the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others;

Call on Member States to actively investigate and prosecute to the full extent of the law all those involved in trafficking, with particular attention to their own police and officials who may aid and abet the entry of women and girls, receive pay-offs or protection money from brothel owners and/or agents, patronize illegal brothels, or have financial holdings in, collect rent from, or who in any other way are complicit in the operations of such brothels;

Call on Member States to prosecute the abuses associated with trafficking, including debt bondage, illegal confinement and rape;

Ensure that both the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on violence against women, its causes and consequences, have adequate money and institutional support to fulfil their mandates, including to monitor the traffic in women and girls;

Call on United Nations agencies that have AIDS programmes, including the World Health Organization, the United Nations Development Programme and UNICEF, to address the human rights implications of the AIDS pandemic in relation to the forced sexual activity of trafficking victims. Such programmes should, among other things, encourage Governments to train their health and law enforcement officials to respect the human rights of women and children who have been trafficked, including the right to be free from discrimination on the basis of sex, ethnicity and national origin.